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\*Admitted in DC & PA Only

+Admitted in DC & AL Only

†Admitted in DC, VA & FL Only

‡Admitted in VA Only

March 15, 2007

**Via Courier**

Federal Communications Commission  
Wireless Bureau Applications  
P.O. Box 358130  
Pittsburgh, PA 15251-5130

**Re: TowerStream Corporation  
FRN: 0015467749  
Application for a Nationwide 2155-2175 MHz Band Authorization  
WT Docket No. 07-16**

Dear Madam or Sir:

Transmitted herewith, on behalf of TowerStream Corporation ("TowerStream"), and in accordance with the Commission's Public Notice, DA 07-492, released January 31, 2007, are the original and two (2) copies of TowerStream's application (FCC Form 601) for authorization to construct and operate a nationwide broadband wireless system in the 2155-2175 MHz frequency band. We have also included the FCC Form 159 Fee Remittance Advice and required FCC filing fee in the amount of \$245.00.

In addition, this application is being filed in the FCC's Electronic Comment Filing System ("ECFS") for consideration in WT Docket No. 07-16.

If there are any questions regarding this filing, please contact the undersigned directly.

Sincerely,

A handwritten signature in cursive script, appearing to read 'D. L. Herman, Jr.', written in black ink. Below the signature is the printed name 'Donald L. Herman, Jr.'

Donald L. Herman, Jr.

Enclosures

READ INSTRUCTIONS CAREFULLY  
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE

Approved by OMB  
3060-0589

Page 1 of 1

(1) LOCKBOX # 358130		SPECIAL USE ONLY	
		FCC USE ONLY	
<b>SECTION A - PAYER INFORMATION</b>			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Bennet & Bennet, PLLC		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$245.00	
(4) STREET ADDRESS LINE NO. 1 4350 East West Highway, Suite 201			
(5) STREET ADDRESS LINE NO. 2			
(6) CITY Bethesda		(7) STATE MD	(8) ZIP CODE 20814
(9) DAYTIME TELEPHONE NUMBER (include area code) (202) 371-1500		(10) COUNTRY CODE (if not in U.S.A.)	
<b>FCC REGISTRATION NUMBER (FRN) REQUIRED</b>			
(11) PAYER (FRN) 0005890264		(12) FCC USE ONLY	
<b>IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET</b>			
(13) APPLICANT NAME TowerStream Corporation			
(14) STREET ADDRESS LINE NO. 1 Tech 2 Plaza, 55 Hammarlund Way			
(15) STREET ADDRESS LINE NO. 2			
(16) CITY Middletown		(17) STATE RI	(18) ZIP CODE 02842
(19) DAYTIME TELEPHONE NUMBER (include area code) (401) 848-5848		(20) COUNTRY CODE (if not in U.S.A.)	
<b>FCC REGISTRATION NUMBER (FRN) REQUIRED</b>			
(21) APPLICANT (FRN) 0015467749		(22) FCC USE ONLY	
<b>COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET</b>			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE CJM	(25A) QUANTITY 1	
(26A) FEE DUE FOR (PTC) \$245.00	(27A) TOTAL FEE \$245.00	FCC USE ONLY	
(28A) FCC CODE 1		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2	
<b>SECTION D - CERTIFICATION</b>			
<b>CERTIFICATION STATEMENT</b> I, <u>Donald L. Herman, Jr.</u> certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief. SIGNATURE <u></u> DATE <u>3/16/07</u>			
<b>SECTION E - CREDIT CARD PAYMENT INFORMATION</b>			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____		EXPIRATION DATE _____	
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.			
SIGNATURE _____		DATE _____	

1) Radio Service Code:  BR	1a) Existing Radio Service Code:
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**General Information**

2) (Select only one) (NE ) NE - New                      RO - Renewal Only                      AU - Administrative Update                      NT - Required Notifications MD - Modification                      RM - Renewal/Modification                      WD - Withdrawal of Application                      EX - Requests for Extension of Time AM - Amendment                      CA - Cancellation of License                      DU - Duplicate License                      RL - Registered Location/Link	
3a) If this application is for a <u>D</u> evelopmental License, <u>D</u> emonstration License, or a <u>S</u> pecial Temporary Authorization (STA), enter the code and attach the required exhibit as described in the instructions. Otherwise enter ' <u>N</u> ' (Not Applicable).	( N ) <u>D</u> <u>M</u> <u>S</u> <u>N/A</u>
3b) If this application is for Special Temporary Authority due to an emergency situation, enter 'Y'; otherwise enter 'N'. Refer to Rule 1.915 for an explanation of situations considered to be an emergency.	( N ) <u>Y</u> es <u>No</u>
4) If this application is for an Amendment or Withdrawal, enter the file number of the pending application currently on file with the FCC.	File Number
5) If this application is for a Modification, Renewal Only, Renewal/Modification, Cancellation of License, Duplicate License, or Administrative Update, enter the call sign of the existing FCC license. If this is a request for Registered Location/Link, enter the FCC call sign assigned to the geographic license.	Call Sign
6) If this application is for a New, Amendment, Renewal Only, or Renewal/Modification, enter the requested authorization expiration date (this item is optional).	MM      DD /
7) Is this application "major" as defined in §1.929 of the Commission's Rules when read in conjunction with the applicable radio service rules found in Parts 22 and 90 of the Commission's Rules? (NOTE: This question only applies to certain site-specific applications. See the instructions for applicability and full text of §1.929).	( N ) <u>Y</u> es <u>No</u>
8) Are attachments (other than associated schedules) being filed with this application?	( Y ) <u>Y</u> es <u>No</u>

**Fees, Waivers, and Exemptions**

9) Is the Applicant exempt from FCC application fees?	( N ) <u>Y</u> es <u>No</u>
10) Is the Applicant exempt from FCC regulatory fees?	( N ) <u>Y</u> es <u>No</u>
11a) Does this application include a request for a Waiver of the Commission's Rule(s)? If 'Yes', attach an exhibit providing rule number(s) and explaining circumstances.	( N ) <u>Y</u> es <u>No</u>
11b) If 11a is 'Y', enter the number of rule sections involved.	Number of Rule Section(s):
12) Are the frequencies or parameters requested in this filing covered by grandfathered privileges, previously approved by waiver, or functionally integrated with an existing station?	( N ) <u>Y</u> es <u>No</u>

4216

CITIBANK, FSB  
WASHINGTON, DC  
15-7011/2540

BENNET & BENNET, PLLC  
1000 VERMONT AVENUE NW, SUITE 1000  
WASHINGTON, DC 20005  
(202) 371-1500



3/15/07

\$ 275.00



(OVER \$3,000)

Pay to the  
Order of  
FCC

Three hundred forty five + no/100

*[Handwritten signature]*

memo: Foxenstream 21 GHz bar/opp

⑈004216⑈ ⑆254070116⑆ ⑈6678 0101⑈

5

**Applicant Information**

13) FCC Registration Number (FRN): 0015467749			
14) Applicant/Licensee Legal Entity Type: (Select One) ( ) Individual ( ) Unincorporated Association ( ) Trust ( ) Government Entity (XX) Corporation ( ) Limited Liability Company ( ) General Partnership ( ) Limited Partnership ( ) Limited Liability Partnership ( ) Consortium ( ) Other:			
15) If the Licensee name is being updated, is the update a result from the sale (or transfer of control) of the license(s) to another party and for which proper Commission approval has not been received or proper notification not provided?			( ) Yes <b>No</b>
16) First Name (if individual):	MI:	Last Name:	Suffix:
17) Legal Entity Name (if other than individual): TowerStream Corp.			
18) Attention To: Jeffrey M. Thompson			
19) P.O. Box:	And/Or	20) Street Address: Tech 2 Plaza, 55 Hammarlund Way	
21) City: Middletown	22) State: RI	23) Zip Code: 02842	
24) Telephone Number: (401) 848-5848		25) FAX: (401) 848-5130	
26) E-Mail Address: jeff@towerstream.com			

**27) Demographics (Optional):**

<b>Race:</b> ( ) American Indian or Alaska Native ( ) Asian ( ) Black or African-American ( ) Native Hawaiian or Other Pacific Islander ( ) White	<b>Ethnicity:</b> ( ) Hispanic or Latino ( ) Not Hispanic or Latino	<b>Gender:</b> ( ) Male ( ) Female
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**Real Party in Interest**

28) Name of Real Party in Interest of Applicant (If different from Applicant):	29) FCC Registration Number (FRN) of Real Party in Interest:
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**Contact Information (If different from the Applicant)**( ) **Check here if same as Applicant.**

30) First Name:	MI:	Last Name:	Suffix:
31) Company Name: Bennet & Bennet, PLLC			
32) Attention To: Donald L. Herman, Jr.			
33) P.O. Box:	And /Or	34) Street Address: 10 G Street, NE, Suite 710	
35) City: Washington	36) State: DC	37) Zip Code: 20002	
38) Telephone Number: (202) 371-1500		39) FAX: (202) 371-1558	
40) E-Mail Address: dherman@bennetlaw.com			

**Regulatory Status**

41) This filing is for authorization to provide or use the following type(s) of radio service offering (enter all that apply): ( <input checked="" type="checkbox"/> ) Common Carrier ( <input checked="" type="checkbox"/> ) Non-Common Carrier ( <input checked="" type="checkbox"/> ) Private, internal communications ( <input type="checkbox"/> ) Broadcast Services ( <input type="checkbox"/> ) Band Manager
--

**Type of Radio Service**

42) This filing is for authorization to provide the following type(s) of radio service (choose all that apply): ( <input checked="" type="checkbox"/> ) Fixed ( <input checked="" type="checkbox"/> ) Mobile ( <input type="checkbox"/> ) Radiolocation ( <input type="checkbox"/> ) Satellite (sound) ( <input type="checkbox"/> ) Broadcast Services
43) Does the Applicant propose to provide service interconnected to the public telephone network? ( <input type="checkbox"/> ) Yes ( <input checked="" type="checkbox"/> ) No

**Alien Ownership Questions (If any answer is 'Y', provide an attachment explaining the circumstances)**

44) Is the Applicant a foreign government or the representative of any foreign government?	( <input type="checkbox"/> ) Yes ( <input checked="" type="checkbox"/> ) No
45) Is the Applicant an alien or the representative of an alien?	( <input type="checkbox"/> ) Yes ( <input checked="" type="checkbox"/> ) No
46) Is the Applicant a corporation organized under the laws of any foreign government?	( <input type="checkbox"/> ) Yes ( <input checked="" type="checkbox"/> ) No
47) Is the Applicant a corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?	( <input type="checkbox"/> ) Yes ( <input checked="" type="checkbox"/> ) No
48a) Is the Applicant directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country?	( <input type="checkbox"/> ) Yes ( <input checked="" type="checkbox"/> ) No
48b) If the answer to 48a is 'Y', has the Applicant received a ruling(s) under Section 310(b)(4) of the Communications Act with respect to the same radio service(s) and geographic coverage area(s) involved in this filing?  If the answer to 48b is 'Y', attach an exhibit that identifies the citation(s) of the applicable declaratory ruling(s) by DA/FCC number of the FCC Record citation, if available, release date, and any other identifying information  If the answer to 48b is 'N', attach to this filing a date-stamped copy of a request for a foreign ownership ruling pursuant to Section 310(b) (4) of the Communications Act.	( <input type="checkbox"/> ) Yes ( <input checked="" type="checkbox"/> ) No

**Basic Qualification Questions**

49) Has the Applicant or any party to this application had any FCC station authorization, license or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license, or construction permit denied by the Commission?	( <input type="checkbox"/> ) Yes ( <input checked="" type="checkbox"/> ) No
50) Has the Applicant or any party to this application, or any party directly or indirectly controlling the Applicant, ever been convicted of a felony by any state or federal court?	( <input type="checkbox"/> ) Yes ( <input checked="" type="checkbox"/> ) No
51) Has any court finally adjudged the Applicant or any party directly or indirectly controlling the Applicant guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition?	( <input type="checkbox"/> ) Yes ( <input checked="" type="checkbox"/> ) No
If the answer to any of 49-51 is 'Y', attach an exhibit explaining the circumstances.	

**Aeronautical Advisory Station (Unicom) Certification**

52) ( <input type="checkbox"/> ) I certify that the station will be located on property of the airport to be served, and, in cases where the airport does not have a control tower, RCO, or FAA flight service station, that I have notified the owner of the airport and all aviation service organizations located at the airport within ten days prior to application.
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**Broadband Radio Service and Educational Broadband Service Cable Cross-Ownership**

53a) Will the requested facilities be used to provide multichannel video programming service?	( <input type="checkbox"/> ) Yes ( <input checked="" type="checkbox"/> ) No
53b) If the answer to question 53a is 'Y', does Applicant operate, control or have an attributable interest (as defined in Section 27.1202 of the Commission's Rules) in a cable television system whose franchise area is located within the geographic service area of the requested facilities?	( <input type="checkbox"/> ) Yes ( <input checked="" type="checkbox"/> ) No
<b>Note:</b> If the answer to question 53b is 'Y', attach an exhibit explaining how the Applicant complies with Section 27.1202 of the Commission's Rules or justifying a waiver of that rule. If a waiver of the Commission Rule(s) is being requested, Item 11a must be answered 'Y'.	

**Broadband Radio Service and Educational Broadband Service (Part 27)**

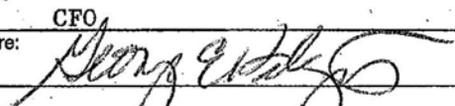
54) (For EBS only) Does the Applicant comply with the programming requirements contained in Section 27.1203 of the Commission's Rules?	( <input type="checkbox"/> ) Yes ( <input checked="" type="checkbox"/> ) No
<b>Note:</b> If the answer to item 54 is 'N', attach an exhibit explaining how the Applicant complies with Section 27.1203 of the Commission's Rules or justifying a waiver of that rule. If a waiver of the Commission Rule(s) is being requested, Item 11a must be answered 'Y'.	
55) (For BRS and EBS) Does the Applicant comply with Sections 27.50, 27.55, and 27.1221 of the Commission's Rules?	( <input checked="" type="checkbox"/> ) Yes ( <input type="checkbox"/> ) No
<b>Note:</b> If the answer to item 55 is 'N', attach an exhibit justifying a waiver of that rule(s). If a waiver of the Commission Rule(s) is being requested, Item 11a must be answered 'Y'.	

**General Certification Statements**

- 1) The Applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application.
- 2) The Applicant certifies that grant of this application would not cause the Applicant to be in violation of any pertinent cross-ownership or attribution rules.\*  
\*If the Applicant has sought a waiver of any such rule in connection with this application, it may make this certification subject to the outcome of the waiver request.
- 3) The Applicant certifies that all statements made in this application and in the exhibits, attachments, or documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.
- 4) The Applicant certifies that neither the Applicant nor any other party to the application is subject to a denial of Federal benefits pursuant to §5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, because of a conviction for possession or distribution of a controlled substance. This certification does not apply to applications filed in services exempted under §1.2002(c) of the rules, 47 CFR § 1.2002(c). See §1.2002(b) of the rules, 47 CFR § 1.2002(b), for the definition of "party to the application" as used in this certification.
- 5) The Applicant certifies that it either (1) has current required ownership data on file with the Commission, (2) is filing updated ownership data simultaneously with this application, or (3) is not required to file ownership data under the Commission's Rules.
- 6) The Applicant certifies that the facilities, operations, and transmitters for which this authorization is hereby requested are either: (1) categorically excluded from routine environmental evaluation for RF exposure as set forth in 47 C.F.R. 1.1307(b); or, (2) have been found not to cause human exposure to levels of radiofrequency radiation in excess of the limits specified in 47 C.F.R. 1.1310 and 2.1093; or, (3) are the subject of one or more Environmental Assessments filed with the Commission.
- 7) The Applicant certifies that it has reviewed the appropriate Commission Rules defining eligibility to hold the requested license(s), and is eligible to hold the requested license(s).
- 8) The Applicant certifies that it is not in default on any payment for Commission licenses and that it is not delinquent on any non-tax debt owed to any federal agency.

**Signature**

56) Typed or Printed Name of Party Authorized to Sign

First Name: <p style="text-align: center;">George</p>	MI: <p style="text-align: center;">E</p>	Last Name: <p style="text-align: center;">Kilguss</p>	Suffix: <p style="text-align: center;">III</p>
57) Title: <p style="text-align: center;">CFO</p>			
Signature: 			58) Date: <p style="text-align: center;">3-15-07</p>
<b>FAILURE TO SIGN THIS APPLICATION MAY RESULT IN DISMISSAL OF THE APPLICATION AND FORFEITURE OF ANY FEES PAID.</b>			
Upon grant of this license application, the Licensee may be subject to certain construction or coverage requirements. Failure to meet the construction or coverage requirements will result in termination of the license. Consult appropriate FCC regulations to determine the construction or coverage requirements that apply to the type of license requested in this application.			
WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, §1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, §312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, §503).			

## Schedule for Geographically Licensed Services

**FCC 601  
Schedule B**

Approved by OMB  
3060 - 0798  
See 601 Main Form Instructions  
for public burden estimate

**MARKET/CHANNEL BLOCK INFORMATION**

1) Market Designator	2) Market Name	3) Channel Block	4) Sub-Market Designator	5) Percentage of Bidding Credit	6) Open/Closed Bidding	7) I Am Seeking A Tribal Lands Bidding Credit In This Market
MSAs 1-200	United States	2155-2175 MHz	NA	NA	NA	( ) <u>Yes</u> (N) <u>No</u>
						( ) <u>Yes</u> ( ) <u>No</u>
						( ) <u>Yes</u> ( ) <u>No</u>

**TRIBAL LANDS INFORMATION - Complete only when attaching the required certification(s) from the tribal government(s)**

8) Market Designator	9) Channel Block	10) Name of Tribal Lands	11) Area, in square kms, of tribal lands contained within designated market	12) Indicate with an "x" those tribal lands where Applicant has secured the required certification(s) from the tribal governments [attach certification(s)]	13) The amount of bidding credit as defined by FCC Rules (by Market)	14) Additional amount of bidding credit requested (attach justification)

**15) Agreement Identifier:** Action Requested:  Add  Delete

Type of Agreement:  Collusion-Based  Designated Entity  Other (Description of Type of Agreement) \_\_\_\_\_

Agreement Name:  NA
---------------------------

**Party(ies) to Agreement(s)**

Action Requested:  Add  Delete

<input type="checkbox"/> Entity Name:	Legal Entity Name	FCC Registration Number (FRN):
<input type="checkbox"/> Individual Name:	First	MI
	Last	Suffix
FCC Registration Number (FRN):		

Action Requested:  Add  Delete

<input type="checkbox"/> Entity Name:	Legal Entity Name	FCC Registration Number (FRN):
<input type="checkbox"/> Individual Name:	First	MI
	Last	Suffix
FCC Registration Number (FRN):		

Action Requested:  Add  Delete

<input type="checkbox"/> Entity Name:	Legal Entity Name	FCC Registration Number (FRN):
<input type="checkbox"/> Individual Name:	First	MI
	Last	Suffix
FCC Registration Number (FRN):		

**Designated Entity/Closed Bidding Agreement Info**

16) Have you entered into any agreements which would impact your Designated Entity or closed bidding status? If 'Y', attach an exhibit.	NA ) Yes No
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**17) Additional Demographic Information (Not Required)**

Applicant Status: <input type="checkbox"/> Minority Owned Business <input type="checkbox"/> Rural Telephone Company <input type="checkbox"/> Woman Owned Business
--

**Revenue and Asset Information**

18) Has any Revenue and Asset information changed for the Applicant, the Disclosable Interest Holder, or the Affiliate? If 'Y', explain why in an exhibit.	NA ) Yes No
--	-------------

**19) Revenue and Asset Information for the Applicant****Purpose (Check Modify and complete all changes different from previously filed FCC Form 175)**

<input type="checkbox"/> Modify
---------------------------------

**Gross Revenue Disclosure Most Recent Reportable Year**

20a) Were the Applicant and any predecessors-in-interest in existence for a full year of the relevant period? If 'N', explain why in an attachment.	NA ) Yes No
---	-------------

If 'Y', provide the following information.

20b) Gross Revenues	\$ _____	(Format: 99,999.99)
20c) Year End Date:	_____	(Date Format: MM/DD/YYYY)

**One Year Prior to Most Recent Reportable Year**

21a) Were the Applicant and any predecessors-in-interest in existence for a full year of the relevant period? If 'N', explain why in an attachment.	NA ) Yes No
---	-------------

If 'Y', provide the following information.

21b) Gross Revenues	\$ _____	(Format: 99,999.99)
21c) Year End Date:	_____	(Date Format: MM/DD/YYYY)

**Two Years Prior to Most Recent Reportable Year**

22a) Were the Applicant and any predecessors-in-interest in existence for a full year of the relevant period? If 'N', explain why in an attachment.	NA ) Yes No
---	-------------

If 'Y', provide the following information.

22b) Gross Revenues	\$ _____	(Format: 99,999.99)
22c) Year End Date:	_____	(Date Format: MM/DD/YYYY)

**Average Gross Revenue**

23) Average Gross Revenue of Reported Years: \$ _____	NA	(Format: 99,999.99)
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**Asset Disclosure**

24) Total Assets as of Application Filing Deadline: \$ _____	NA	(Format: 99,999.99)
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**Financial Statements**

25) Audited or Unaudited (Check One)      NA
<input type="checkbox"/> The Applicant used audited financial statements.
<input type="checkbox"/> The Applicant used unaudited financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) and certified by the Applicant's chief financial officer or the equivalent.

**FCC 601  
Schedule B**

**26) Revenue and Asset Information for the Disclosable Interest Holder (DIH)  
Purpose (Select One)**

<input type="checkbox"/> Add	<input type="checkbox"/> Modify	<input type="checkbox"/> Delete
------------------------------	---------------------------------	---------------------------------

**27) Disclosable Interest Holder** See FCC Form 602-Ownership Disclosure Form, File NO. 0002951613.

<input type="checkbox"/> Entity Name:				FCC Registration Number (FRN):
<input type="checkbox"/> Individual Name: First	MI	Last	Suffix	FCC Registration Number (FRN):

**Gross Revenue Disclosure Most Recent Reportable Year**

28a) Were the DIH and any predecessors-in-interest in existence for a full year of the relevant period? If 'N', explain why in an attachment.	( ) <u>Yes</u> <b>No</b>
If 'Y', provide the following information.	
28b) Gross Revenues	\$ _____ (Format: 99,999.99)
28c) Year End Date:	_____ (Date Format: MM/DD/YYYY)

**One Year Prior to Most Recent Reportable Year**

29a) Were the DIH and any predecessors-in-interest in existence for a full year of the relevant period? If 'N', explain why in an attachment.	( ) <u>Yes</u> <b>No</b>
If 'Y', provide the following information.	
29b) Gross Revenues	\$ _____ (Format: 99,999.99)
29c) Year End Date:	_____ (Date Format: MM/DD/YYYY)

**Two Years Prior to Most Recent Reportable Year**

30a) Were the DIH and any predecessors-in-interest in existence for a full year of the relevant period? If 'N', explain why in an attachment.	( ) <u>Yes</u> <b>No</b>
If 'Y', provide the following information.	
30b) Gross Revenues	\$ _____ (Format: 99,999.99)
30c) Year End Date:	_____ (Date Format: MM/DD/YYYY)

**Average Gross Revenue**

31) Average Gross Revenue of Reported Years: \$ _____ (Format: 99,999.99)
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**Asset Disclosure**

32) Total Assets as of Application Filing Deadline: \$ _____ (Format: 99,999.99)
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**Financial Statements**

33) Audited or Unaudited (Check One)
<input type="checkbox"/> The Disclosable Interest Holder used audited financial statements.
<input type="checkbox"/> The Disclosable Interest Holder used unaudited financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) and certified by the Applicant's chief financial officer or the equivalent.

**FCC 601  
Schedule B**

**34) Revenue and Asset Information for the Affiliate  
Purpose (Select One)**

<input type="checkbox"/> Add	<input type="checkbox"/> Modify	<input type="checkbox"/> Delete
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**35) Affiliate** See FCC Form 602-Ownership Disclosure Form, File No. 0002951613.

<input type="checkbox"/> Entity Name:			FCC Registration Number (FRN):
<input type="checkbox"/> Individual Name: First	MI	Last	Suffix FCC Registration Number (FRN):

**Gross Revenue Disclosure Most Recent Reportable Year**

36a) Were the Affiliate and any predecessors-in-interest in existence for a full year of the relevant period? If 'N', explain why in an attachment.	( ) <u>Yes</u> <u>No</u>
If 'Y', provide the following information.	
36b) Gross Revenues	\$ _____ (Format: 99,999.99)
36c) Year End Date:	_____ (Date Format: MM/DD/YYYY)

**One Year Prior to Most Recent Reportable Year**

37a) Were the Affiliate and any predecessors-in-interest in existence for a full year of the relevant period? If 'N', explain why in an attachment.	( ) <u>Yes</u> <u>No</u>
If 'Y', provide the following information.	
37b) Gross Revenues	\$ _____ (Format: 99,999.99)
37c) Year End Date:	_____ (Date Format: MM/DD/YYYY)

**Two Years Prior to Most Recent Reportable Year**

38a) Were the Affiliate and any predecessors-in-interest in existence for a full year of the relevant period? If 'N', explain why in an attachment.	( ) <u>Yes</u> <u>No</u>
If 'Y', provide the following information.	
38b) Gross Revenues	\$ _____ (Format: 99,999.99)
38c) Year End Date:	_____ (Date Format: MM/DD/YYYY)

**Average Gross Revenue**

39) Average Gross Revenue of Reported Years: \$ _____ (Format: 99,999.99)
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**Asset Disclosure**

40) Total Assets as of Application Filing Deadline: \$ _____ (Format: 99,999.99)
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**Financial Statements**

41) Audited or Unaudited (Check One)
<input type="checkbox"/> The Affiliate used audited financial statements.
<input type="checkbox"/> The Affiliate used unaudited financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) and certified by the Applicant's chief financial officer or the equivalent.

**FCC 601  
Schedule B**

**Closed Bidding/Designated Entity Eligibility**

**Total Gross Revenues for Most Recent Reportable Year**

42a) Gross Revenues \$ NA (Format: 99,999.99)  
42b) Year End Date: \_\_\_\_\_ (Date Format: MM/DD/YYYY)

**Total Gross Revenues for One Year Prior to Most Recent Reportable Year**

43a) Gross Revenues: \$ NA (Format: 99,999.99)  
43b) Year End Date: \_\_\_\_\_ (Date Format: MM/DD/YYYY)

**Total Gross Revenues for Two Years Prior to Most Recent Reportable Year**

44a) Gross Revenues: \$ NA (Format: 99,999.99)  
44b) Year End Date: \_\_\_\_\_ (Date Format: MM/DD/YYYY)

**Total Aggregate Average Gross Revenues for Designated Entity**

45) Aggregate Average Gross Revenue: \$ NA (Format: 99,999.99)

**Total Aggregate Average Gross Revenues for Closed Bidding**

46) Aggregate Average Gross Revenue: \$ NA (Format: 99,999.99)

**Total Assets Disclosure for Closed Bidding**

47) Total Assets: \$ NA (Format: 99,999.99)

**Certifications** (By signing the Main Form, the Applicant certifies that the statements listed are true, complete, correct and made in good faith)

**For Applicants Claiming Eligibility as an Entrepreneur Under the General Rule**

Applicant certifies that they are eligible to obtain the licenses for which they apply.

**For Applicants Claiming Eligibility as a Publicly Traded Corporation**

Applicant certifies that they are eligible to obtain the licenses for which they apply and that they comply with the definition of a Publicly Traded Corporation, as set out in the applicable FCC rules.

**For Applicants Claiming Eligibility using a Control Group Structure**

Applicant certifies that they are eligible to obtain the licenses for which they apply.

Applicant certifies that the Applicant's sole control group member is a pre-existing entity, if applicable.

**For Applicants Claiming Eligibility as a Very Small Business, Very Small Business Consortium, Small Business, or as a Small Business Consortium**

Applicant certifies that they are eligible to obtain the licenses for which they apply.

Applicant certifies that the Applicant's sole control group member is a pre-existing entity, if applicable.

**For Applicants Claiming Eligibility as a Rural Telephone Company**

Applicant certifies that they meet the definition of a Rural Telephone Company as set out in the applicable FCC rules, and must disclose all parties to agreement(s) to partition licenses won in this auction. See applicable FCC rules.

**For Applicants Claiming Tribal Lands Bidding Credit**

Applicant certifies that it will comply with the bidding credit buildout requirements and consult with the tribal government(s) regarding the siting of facilities and deployment of service on the tribal land(s) as set out in the applicable FCC rules.

**For Auction Applicants**

Applicant provided separate gross revenue information for itself, for each of Applicant's officers and directors; for each of Applicant's other controlling interests; for each of Applicant's affiliates; and for each affiliate of each of Applicant's officers, directors, and other controlling interests.

Applicant provided separate gross revenue and total asset information for itself, for each of Applicant's officers and directors; for each of Applicant's other controlling interest; for each of Applicant's affiliates; and for each affiliate of each Applicant's officers, directors, and other controlling interests.

### Proposal of TowerStream Corporation

By this application, TowerStream Corporation (“TowerStream”) seeks authorization to construct and operate a nationwide broadband radio network, on an exclusive basis, in the 2155-2175 MHz band (“2.1 GHz”). This application is mutually exclusive with the application filed by M2Z Networks, Inc. (“M2Z”) on May 5, 2006, as amended September 1, 2006, and with certain other applications filed in response to the Public Notice accepting M2Z’s application for filing.<sup>1</sup> As discussed below, TowerStream requests that the Federal Communications Commission (“FCC” or “Commission”) complete a rulemaking proceeding to establish service and licensing rules for the 2.1 GHz band, and award licenses through competitive bidding. In the absence of established licensing and service rules, however, this Exhibit sets for the terms and conditions which TowerStream proposes for the requested license.

#### **I. TowerStream Proposal**

##### *A. License Area and Services*

TowerStream seeks a authorization to construct and operate a broadband radio network in the 2.1 GHz band in the top 200 Metropolitan Statistical Areas (“MSA”). TowerStream will deploy a broadband radio network based on the 802.16(e) standard using WiMAX-compliant equipment. TowerStream will use time division duplex (“TDD”) in the band to maximize

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<sup>1</sup> See Wireless Telecommunications Bureau Announces that M2Z Networks, Inc.’s Application for License and Authority to Provide a National Broadband Radio Service in the 2155-2175 MHz Band is Accepted for Filing, Public Notice, DA 07-492 (rel. Jan. 31, 2007) (“*Acceptance PN*”).

spectral efficiency. TowerStream also will use state of the art Advanced Antenna Systems (“AAS”).

TowerStream proposes to provide high-speed broadband services to subscribers at a reasonable and affordable rate. TowerStream will offer at least three tiers of service, the lowest of which will provide access of 1.5 Mbs downstream and 386 kbps upstream. TowerStream’s system will introduce facilities base competition throughout the nation.

TowerStream does not propose to offer “free” service to the public. TowerStream believes that the speed of the “free” service proposed by M2Z will be of questionable use by the time it is deployed (if it is ever deployed). Existing commercial mobile radio services (“CMRS”) networks already meet or exceed such speeds and are widely available at reasonable prices. Accordingly, TowerStream believes that to be of value, a system utilizing the 2.1 GHz band must connect end users at higher speeds than those proposed for the “free” M2Z service. In addition, as noted in various comments and petitions to deny, “free” is not really free if the end user customer is require to purchase an expensive piece of customer premises equipment (“CPE”).

TowerStream also does not propose a specific pricing plan that would be a condition of its license. Such proposals smack of price fixing, and it is virtually impossible for any carrier to guarantee now what its prices will be in five-years, much less ten or fifteen. Any carrier that proposes to fix its price in such a manner is probably gambling on being able to renegotiate with the Commission post licensing.

Finally, TowerStream does not propose to pay a licensing fee or renewal fee. Instead, like McElroy Electronics Corporation (“McElroy”), TowerStream proposes to pay the full value of its licenses, as determined in an auction, to the U.S. Treasury.

As discussed below, rather than the Commission regulating a service level, pricing plan and spectrum usage fee, TowerStream believes the far better approach would be for the Commission to make the spectrum available pursuant to a rulemaking proceeding and auction. As past experience has demonstrated, this will allow the market place to determine what services a carrier offers and at what prices.

In addition to providing service to subscribers, TowerStream will provide priority access to public safety entities operating with open standard equipment during emergencies, and at no charge. TowerStream will work with the public safety community and equipment manufactures to develop standards for interoperability.

TowerStream also will undertake to provide technology for additional 2.1 GHz band deployments to a significant portion of rural and underserved areas through a close relationship with existing rural telephone companies and wireless companies<sup>2</sup>. TowerStream is establishing strategy alliances with rural companies to ensure that it can quickly and efficiently deploy service to difficult to serve rural areas. TowerStream understands that merely providing service to 95 percent of the U.S. population largely ignores the nation's underserved and rural areas.

TowerStream will comply with all requirements for the protection of minors from access to indecent and obscene materials, and will offer its users options for filtering and blocking pornographic sites.

#### *B. Licensing and Service Rules*

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<sup>2</sup> TowerStream supports the licensing of the 2.1 GHz band in rural areas to rural operators—operators that have, for years, been providing broadband services to rural and unserved areas.

TowerStream requests a fifteen-year license term. As a condition of its license, TowerStream will provide coverage to at least fifty (50%) of the population of its licensed area within five (5) years, and will provide coverage to at least seventy-five (75%) of the population of its licensed areas within ten (10) years. Moreover, TowerStream will provide substantial service to ninety (90%) of the Rural Service Areas (“RSAs”) within ten (10) years.

TowerStream will ensure deployment to rural areas by establishing strategic alliances with small and rural carriers and by aggressive use of secondary market techniques.

If TowerStream fails meet the five-year benchmark, then the license will be subject to cancellation. If TowerStream fails meet the ten-year benchmark, any area not then served shall be open to competing applications on a first-come basis on the basis of Cellular Market Areas (“CMAs”).

TowerStream will construct and operate its system to comply with the Commission’s rules for the protection of adjacent and co-channel licensees and will comply with the Commission’s rules and policies for the protection and relocation of incumbent Fixed Microwave Service (“FMS”) and Broadband Radio Service (“BRS”) licensees.

## **II. Qualifications**

TowerStream is a leading fixed wireless service provider in the U.S., delivering high-speed Internet access to businesses. Founded in 2000, the company has established pre-WiMAX networks in such markets as New York City, Los Angeles, Chicago, San Francisco, Seattle, the greater Boston, Providence and Newport, R.I. areas, and continues to expand coverage throughout the country. The company was the first carrier selected to join the WiMAX Forum to assist leading vendors in establishing industry compliance with international broadband wireless

access standards and cross-vendor interoperability. TowerStream has substantial experience in the deployment of competitive broadband wireless systems. TowerStream currently operates using unlicensed spectrum in the 5.8 GHz band.

### **III. Procedural Matters**

In the *Acceptance PN*, the Wireless Telecommunications Bureau stated, “Petitions, comments or additional applications may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.”<sup>3</sup> As correctly noted by McElroy, in accepting M2Z’s application for filing, the Bureau effectively established procedures for accepting similarly filed applications and waived filing requirements that might otherwise be inconsistent with the filing of such applications.<sup>4</sup> Accordingly, TowerStream does not believe that any waiver is required for the acceptance and processing of this application.

To the extent necessary, however, TowerStream requests of a waiver of the Commission’s wireless application and processing rules, notably Rule Section 1.913(b), and in general the application requirements of Rule Sections 1.913-1.917, that would otherwise be inconsistent with the acceptance and processing of this application. As noted by other applicants and tacitly recognized in the *Acceptance PN*, the Universal Licensing System (“ULS”) does not appear to accept electronically filed applications for this spectrum, and accordingly, TowerStream hereby submits this application via paper copy and electronic filing in Docket No. 07-16.

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<sup>3</sup> *Acceptance PN* at p. 2.

<sup>4</sup> See McElroy Electronics Corporation Application for a Nationwide 2155-2175 Band Authorization (filed March 2, 2007), Exhibit I, note 1, (“McElroy Application”).

In addition, because the Commission has not adopted service rules for this spectrum, it is not clear which service code and schedules to FCC Form 601 apply. Accordingly, for the purpose of this application, and consistent with the other applications filed in this proceeding, TowerStream has used the service code "BR" and completed the applicable portions of Schedule B. To the extent the Commission establishes application requirements or processing standards to govern applications for the 2.1 GHz band, TowerStream will amend its application as necessary and requests leave to do so.

Section 1.925(b)(3) of the Commission's rules sets out the general standards for determining when a waiver should be granted in Wireless Telecommunications Bureau proceedings:

The Commission may grant a request for waiver if it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>5</sup>

To the extent that a waiver is needed, it is warranted pursuant to these standards. The underlying purpose of requiring electronic filing would not be served because the ULS is not currently configured to receive applications of this type and the Commission has already accepted the M2Z application. Having accepted the M2Z application, it would be in the public interest for the Commission to accept and consider other competing proposals. Under the second prong of the rule, the unusual facts in this case, and the Bureau's invitation in the *Acceptance PN*

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<sup>5</sup> 47 C.F.R. § 1.925(b)(3).

to file paper copies would render strict application of the filing rules inequitable because the Commission has already accepted M2Z's application for filing. Because the Commission has not adopted service specific rules for the 2.1 GHz spectrum, TowerStream has no alternative but to proceed as M2Z did in filing its application.

#### **IV. Public Interest**

In the *Acceptance PN*, the Bureau noted "additional applications for spectrum in this band may be filed while the M2Z application is pending."<sup>6</sup> The M2Z application remains pending, and this application, and the applications of other parties submitted at the invitation of the *Acceptance PN* are mutually exclusive with M2Z's application. Accordingly, the Commission cannot grant M2Z's application without resolving the mutual exclusivity, and denying all but one of the mutually exclusive applications.

TowerStream believes that it would be in the public interest for the Commission to adopt service and licensing rules for the 2.1 GHz spectrum pursuant to a rule making proceeding, and to resolve mutually exclusive applications through competitive bidding (unless pursuant to the rulemaking, the Commission determines that it would be in the public interest to allocate the spectrum for non-exclusive contention-based systems and services). The public interest would not be served by an *ad hoc* adjudication of the various mutually exclusive license proposals in this proceeding.

While TowerStream opposes the grant of the M2Z application or of any of the competing proposals absent completion of a rulemaking, should the Commission determine that it is contrary to the public interest to do so, TowerStream hereby submits this application to be able

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<sup>6</sup> *Acceptance PN* at p. 2.

participate in providing service in the 2.1 GHz band. If the Commission determines that it is in the public interest to evaluate competing proposals on an *ad hoc* basis, the Commission should establish a cut-off date for the filing of applications and resolve mutual exclusivity through competitive bidding. It would be manifestly inconsistent with the public interest for the Commission to grant M2Z's application through an ad hoc adjudication, or without allowing other parties to apply for the same license and to offer competing proposals.<sup>7</sup>

## **V. Conclusion**

For the reasons stated herein, the Commission should accept for filing this application, but also should conduct a formal rulemaking to adopt service and licensing rules for the 2.1 GHz band. The Commission should then accept and resolve mutually exclusive applications through competitive bidding.

To the extent the Commission determines that a rulemaking is not in the public interest, the Commission should resolve mutual exclusivity between the competing applicants in this proceeding through a closed auction process.

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<sup>7</sup> TowerStream shares the concern of Commnet that that M2Z's proposal is based on the applicant's gamble of post licensing renegotiation of its obligations. As Commnet noted, the FCC has ceased to use installment payment plans because it has no effective way to hold a licensee to all the promises it has made. *See Commnet Wireless, LLC Application for License and Authority to Construct and Operate a System to Provide Nationwide Broadband Radio Service in the 2155-2175 MHz Band (Filed March 2, 2007), Exhibit 7 at pp. 2-3; see also Exhibit 2 at p.2.* The M2Z proposal is basically an installment payment scheme.